

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 181 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KHUMANSING NAGJIBHAI

Versus

MADHUBEN D/O RAMUBHAI NARANBHAI PATEL

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Appearance:

MR PN BAVISHI for Petitioner

MS PJ DAVAWALA for Respondent No. 1

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 06/05/97

ORAL JUDGEMENT

The Appellant was the husband of the Opponent.  
During their married life, Dharmistha; a minor daughter,  
was born. At present, after the parties separated and

took divorce, she is residing with the Opponent, her mother. At the time of separation and having divorce, it was agreed between the two parties that minor Dharmistha shall be in the custody of the Opponent, and the appellant would be free to take appropriate action after Dharmistha attends the age of 7 years. The appellate then initiated necessary action before the District Court at Bharuch, which came to be registered as Civil Misc. {Guardian} Application No. 16 of 1991 for the custody of minor Dharmistha, who is at present aged 14 years. The matter was transferred to the learned Extra-Assistant Judge, Bharuch, who after hearing the parties and appreciating the evidence on record, rejected the application. It is against that order, the present appeal has been filed.

2. Whenever the question of custody of a minor child is to be considered for the Court, the paramount consideration must be the well-being of the minor. Ordinarily, as submitted on behalf of the applicant, the father may, after the minor attends 7 years of age, has a right to custody of the child but that is not the usual and general rule, after all in whose custody the minor will prosper better has to be considered ie., the well-being of the minor should be the paramount consideration. I have gone through copy of the judgment wherein it appears the learned Judge has considered this aspect at length and has assigned logical reasoning, to which I agree. When I am in general agreement with the learned Judge, it is not necessary to restate the same. Suffice it to say that the learned Judge has rightly reached the conclusion that the well-being of minor Dharmistha would be maintained if she remains in the custody of the opponent.

3. Today, the parties and minor Dharmistha are present in the Court and after putting several queries, I am satisfied that the Opponent is the best person who can look after minor Dharmistha. Uptill now, she has been maintained well. She has submitted that she has never repented for being placed in the custody of the mother. Even the second husband of her mother is also maintaining her well. The applicant as per the order was required to pay maintenance every month @ Rs. 100/=. Though 15 months maintenance accrued due, he did not make payment and after 15 months period was over, he at a time remitted Rs. 1500/=. This is the circumstance that goes to show that the applicant is reluctant in maintaining his daughter and for one or other reason tried to avoid or delay the maintenance. Minor Dharmistha has also firmly expressed her desire that she would like to be in

the custody of the opponent rather than the appellant.  
The learned advocate for the appellant has in view of the  
matter no comment to offer.

4. In view of the fact, I see no reason to admit the  
appeal, and further no worth triable issue is raised.  
The appeal is therefore dismissed. No costs.

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Prakash\*